(18,608.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 88.

THE BRUNSWICK TERMINAL COMPANY ET AL.

vs.

THE NATIONAL BANK OF BALTIMORE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from the circuit court of the United States for the district of Maryland	1	1
Bill of complaint	1	2
Subpœna	6	6
Marshal's return	7	6
Order for appearance for defendant	7	7
Answer of the National Bank of Baltimore	8	7
Petition of creditors to be made parties plaintiff and order of court thereon granting same	11	10
Agreed statement of facts	15	13
Opinion	25	23
Final decree	31	28
Petition of complainants for an appeal and order thereon allowing same	31	28

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 29, 1903.

	Original.	Print
Assignment of errors	32	29
Appeal bond	33	30
Citation	34	31
Order to transmit record	34	31
Clerk's certificate	35	31
Record entries	36	32
Stipulation to continue	37	32
Certificate of questions	38	33
Order to transmit record	43	37
Clerk's certificate to record	44	37
Writ of certiorari	45	38
Return on writ of certiorari	47	38

a *Certified Record Transmitted to the Supreme Court of the United States in Obedience to the Writ of Certiorari of that Court.*

Transcript of Record.

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Record filed January 23rd, 1902.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *District of Maryland*, } *To-wit:*

At a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the courthouse, in the city of Baltimore, on the first Monday of November, being the fourth day of the same month, in the year of our Lord one thousand, nine hundred and one.

Present: The Honorable Thomas J. Morris, judge of the Maryland district; John C. Rose, Esq., attorney; William F. Airey, Esq., marshal; James W. Chew, clerk.

Among other were the following proceedings, to-wit:

THE BRUNSWICK TERMINAL COMPANY, a Corporation; The Seaboard National Bank, a Corporation; Maria L. Stacy, a Widow; J. J. Wimberly, W. H. Berrie, W. E. Allison, and Others, Complainants,
versus
THE NATIONAL BANK OF BALTIMORE, Respondent.
} In Equity.

Bill of Complaint.

Filed 14th January, 1898.

In the United States Circuit Court for the Fourth Circuit, District of Maryland, Baltimore.

THE BRUNSWICK TERMINAL COMPANY and Others, Complainants,
vs.
THE NATIONAL BANK OF BALTIMORE, Respondent.

To the honorable the judges of said court, sitting in equity:

2 Your complainant, The Brunswick Terminal Company, a corporation duly created, organized, and existing under the laws of the State of Georgia, the Seaboard National Bank, a corporation duly created, organized and existing under and by virtue of the laws of the United States, Maria L. Stacy, a widow, J. J. Wimberly and W. H. Berrie, all residents and citizens of the State of Georgia, bring this their bill of complaint on behalf of themselves and all other creditors of the Brunswick State bank, a corporation which was created, organized and existed up to the 25th day of May, 1893, under the laws of the State of Georgia, with its place of citizenship and residence in said State, who may think proper to come into this suit and contribute their proper proportion of the costs thereof, against the National Bank of Baltimore, a corporation duly created, organized and existing under and by virtue of the laws of the United States, with its place of citizenship and residence in the city of Baltimore, in the State of Maryland; and thereupon your complainants, complaining, say:

First. That on or about the 25th day of August, 1890, the said respondent became a stockholder of record in the said Brunswick State bank, a corporation created, organized and existing under the laws of the State of Georgia, engaged in a general banking business in said State, with its chief office and place of business at Brunswick, Glynn county, in said State, by acquiring from one Edward F. Marsh, and becoming the owner and holder of, one hundred and ten (110) shares of the capital stock of said Brunswick State bank, of the par value of one hundred dollars (100.00) per share, evidenced by stock certificate number fifty-five (No. 55).

Second. That afterwards, to-wit, on the 30th day of October, 1890, the said respondent attempted to transfer its said stock to one C. B. Lloyd, of Brunswick, Glynn county, Georgia; that said alleged transfer of stock was not made in conformity with the laws of the State of Georgia governing such transactions; that the said respondent failed to give any notice by publication or otherwise, or to in any manner or form comply with the requirements of said law; that your complainants had no knowledge whatsoever of such alleged transfer until the failure and closing of said Brunswick State bank on the 25th day of May, 1893; and that your complainants are advised, and so believe and charge, that said attempted transfer was inoperative and void in-so-far as it undert[illegible]s to relieve the said respondent of its liability as a stockholder to them.

3 Third. That the said Brunswick State bank and the said Edward S. Marsh are utterly and notoriously insolvent, and the said C. B. Lloyd died, insolvent, in the year 1893.

Fourth. That the liability of the stockholders of the said Brunswick State bank to the creditors thereof, created by its charter, found in the Laws of Georgia of 1889, page 522, is as follows: "Section 9. Be it and it is hereby further enacted, that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto, shall be individually liable, equally and ratably, and not one for another, as sureties to the creditors of such corporation, for all contracts and debts of said corporation, to the extent of the amount of their stock therein, at the par value thereof, respectively, at the time the debt was created, in addition to the amount invested, in such shares;" that said liability thus created is, under the laws of the State of Georgia a, direct one of the stockholders to the creditors, accruing immediately upon the cessation of business, the insolvency of, or the appointment of a receiver for said Brunswick State bank, and is a debt in the nature of a specialty and is not barred by the expiration of less than twenty years, and imposes upon each stockholder a liability for his *pro rata* share of all the debts of the said bank, whether contracted before or after he became a stockholder and until the stockholder shall comply with the statutory provision set forth in the next section, provided such liability shall in no case exceed the par value of the shares held by him.

Fifth. Your complainants aver and charge that the law of the State of Georgia governing the liability of the respondent to the creditors of the said Brunswick State bank, found in the Code of Georgia, 1882, section 1496, is as follows, to-wit: "When a stockholder in any bank or any other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability, unless he receives a written notice from a creditor, within six months, after such transfer, of his intention to hold him liable, provided he shall give notice once a month, for six months, of such transfer, immediately thereafter, in two newspapers in and nearest the place where such institution shall keep its principal office;" and

that under the law of the State of Georgia the said respondent by its failure to comply with the above provision still remains a stockholder of said Brunswick State bank, as regards the creditors thereof, and is, therefore, liable to said creditors to the amount of the par value of its stock in said bank as above set forth, with in-
4 terest at the rate of six per cent. per annum from the 25th day of May, 1893, the date of suspension of business by said bank.

Sixth. That said Brunswick State bank was engaged in a general banking business in said city of Brunswick, Georgia, at the time the respondent acquired said one hundred and ten (110) shares of stock, and continued in said business until the 25th day of May, 1893, when it suspended, closed its doors, and refused to pay its creditors, or any of them; that said bank has never since resumed business, and its indebtedness herein set out, to your complainants, was created after the said respondent acquired its said shares of stock.

Seventh. That on or about the 30th day of May, 1893, William M. Wiggins and others, and E. Shryver and others, alleging themselves to be creditors of said Brunswick State bank, filed their petitions in the clerk's office of the superior court of Glynn county, in the State of Georgia, against said bank, alleging its insolvency and praying for the appointment of a receiver to take possession of and administer all its assets; that subsequently the court passed a decree finding and declaring said bank to be totally insolvent, and appointing a permanent receiver to take charge of and administer the assets of said bank as prayed; that the State of Georgia in its sovereign capacity was, under said petitions, a preferred creditor; that said Glynn county was also under said petitions a preferred creditor; and that the payments made to the said State of Georgia, and Glynn county, together with the costs of the suit, exhausted all the assets of said bank, leaving nothing for your complainants and the other general creditors of said bank.

Eighth. That at the date of suspension of business by said Brunswick State bank, on the 25th day of May, 1893, the total indebtedness of said bank, due and unpaid, was one hundred and thirty-seven thousand, five hundred and twenty-seven dollars and forty-eight cents ($137,527.48), and its present indebtedness, exclusive of interest due and unpaid, exceeds the sum of fifty thousand dollars ($50,000.00), for the payment of which, or any part thereof, the said bank has no assets or properties whatever; that the said bank issued, under authority of its charter, five hundred (500) shares of stock of the par value of one hundred dollars ($100.00) per share, making a total issue of stock of fifty thousand dollars ($50,000.00); wherefore, the outstanding indebtedness of said bank, exclusive of interest, over and above all its assets and properties, being in
5 excess of the par value of the total issue of its capital stock, each and all the stockholders of said bank, including the said National Bank of Baltimore, respondent, upon its insolvency, cess-

tion of business, and the appointment of a receiver to take charge of and administer its assets as above set forth, became at once and are, under the law of the State of Georgia, individually liable to the creditors of said bank, including your complainants, for the full par value of the stock held by them, with interest from the date of the accruing of such liability.

Ninth. Your complainants further aver and charge that upon the cessation of business of said Brunswick State bank, on the 25th day of May, 1893, the said bank was and is now indebted to them and each of them, exclusive of interest, as follows, to-wit:

To the said Brunswick Terminal Company.....	$6,155.07
To the said Seaboard national bank.....	2,750.00
To the said Maria L. Stacy, a widow.....	4,047.27
To the said J. J. Wimberly.....	3,322.80
To the said W. H. Berrie	2,494.59

All of which said debts accrued during the year 1892 & '3; none of which said debts, nor any part of any of them, have been paid, but are still due and owing, and are each and all without security or priority; that said debts are upon extended accounts with said Brunswick State bank, running through considerable periods of time, and are balances due them as depositors and otherwise upon such extended accounts, and that to attach copies of each of said accounts hereto would make this bill unnecessarily voluminous, and your complainants therefore pray leave to omit the same, and to be allowed to make proof thereof from the books of said Brunswick State bank, and other proper evidence, under the direction of this honorable court, by such method as it may direct.

To the end, therefore, that your complainants may have that relief which they can only obtain in a court of equity, and that the said respondent may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainants; that an account may be taken by and under the direction and decree of this honorable court; that a master may be appointed to take testimony in this cause; that all other creditors of said Brunswick State bank not herein made parties complainants may have leave to intervene in said cause, and that the respondent

6 *made be* decreed to pay unto your complainants, and such other creditors as shall intervene and prove their claim in this cause, the sum of eleven thousand dollars ($11,000.00), together with interest at the rate of six per cent. per annum from the 25th day of May, 1893, together with the costs of this proceeding; that your complainants' counsel be allowed a reasonable and proper fee for instituting and conducting this suit, and that your complainants may have such other and further relief in the premises as the nature and circumstances of this case may require and to your honors shall seem meet.

May it please your honors to grant unto your complainants a writ of subpœna, to be directed to the said The National Bank of Balti-

more, respondent, a corporation, residing in the city of Baltimore, State of Maryland, thereby commanding it at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises.

And, as in duty, &c.

GOODYEAR & KAY,
WILLIAMS & WILLIAMS,
Solicitors for Complainants.

Subpœna.

THE UNITED STATES OF AMERICA, *District of Maryland*, } *To-wit:*

To The National Bank of Baltimore, Greeting:

Seal of Circuit Court of U. S., Dist. of Md.

You are hereby command- that, all excuses and delays set aside, you be and appear at the clerk's office of the circuit court of the United States for the fourth circuit in and for the district of Maryland, on the first Monday in February next, to answer unto the bill of complaint of the Brunswick Terminal Company, a corporation organized under the laws of the State of Georgia; the Seaboard National Bank, a corporation organized and existing under and by virtue of the laws of the United States; Maria L. Stacy, a widow; J. J. Wimberly and W. H. Berrie, all residents and citizens of the State of Georgia, in said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 14th day of January, in the year of our Lord, 1898.

Issued fourteenth day of January, 1898.

JAS. W. CHEW, *Clerk.*

7 MEMORANDUM.—The defendant is required to enter its appearance in the suit in the clerk's office on or before the first Monday of February next, otherwise the bill may be taken *pro confesso.*

Marshal's Return.

Summoned the National Bank of Baltimore by service on Christian Devries, its president, and copy left with him this 15th day of January, 1898, at 11.10 a. m.

CHAS. H. EVANS,
U. S. Marshal.

Order for Appearance.

Filed 7th February, 1898.

In the United States Circuit Court for the Fourth Circuit, District of Maryland, Baltimore.

THE BRUNSWICK TERMINAL COMPANY and Others, Complainants, vs. THE NATIONAL BANK OF BALTIMORE, Respondent. } In Equity.

James W. Chew, Esq., clerk of said court:

Enter our appearance for the respondent, The National Bank of Baltimore.

JAMES L. McLANE,
ALLAN McLANE,
Sol'rs for Nat'l Bank of Baltimore.

8 *Answer of National Bank of Baltimore.*

Filed 5th March, 1898.

In the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland, Sitting in Equity.

THE BRUNSWICK TERMINAL COMPANY and Others, Plaintiffs, vs. THE NATIONAL BANK OF BALTIMORE, Defendant. }

The answer of the National Bank of Baltimore, a body corporate, under its corporate seal, to the bill of complaint of the Brunswick Terminal Company, the Seaboard National Bank, Maria L. Stacy, J. J. Wimberly, and W. H. Berrie against it in this honorable court exhibited.

This defendant, The National Bank of Baltimore, reserving to itself all and all manner of exception to the manifold inaccuracies, insufficiencies and imperfections of the said bill of complaint, nevertheless, for answer thereto, or to so much thereof as it is necessary to make answer unto, traverse or deny, answering saith:

1. This defendant admits that it is a body corporate, incorporated under the laws of the United States, and having its principal office and place of business at the city of Baltimore in the State of Maryland, and subject to be treated as a citizen and resident of the said State, for the purposes of this proceeding.

2. It admits that the Brunswick State bank was and is a corporation, created, organized and existing under the laws of Georgia, engaged in the banking business, with its chief office and place of business at Brunswick, Glynn county, in the State of Georgia.

3. It denies that it became a stockholder of the said Brunswick State bank, as stated in the said bill, and it saith that on the fifth day of August, 1890, it discounted at the instance of W. A. Cunningham the promissory note of C. B. Lloyd and F. E. Cunningham for the sum of $10,000.00 due October 26–29th, 1890, endorsed by Lloyd & Adams and W. A. Cunningham, for the security for the payment of which it received from the said C. B. Lloyd a certificate for one hundred shares of the capital stock of said bank,
9 standing in the name of E. S. Marsh, and duly assigned by him for transfer, and a certificate for ten shares of the capital stock of said bank, standing in the name of Edward C. Thompson, and duly assigned by him for transfer, and, desiring only to avail itself of the security of said collateral stock, this defendant, on or about the 25th day of August, 1890, caused the said certificates of stock to be transferred into its own name on the books of said Brunswick State bank, and on the 30th day of October following, the said note having been paid to it, and the said C. B. Lloyd having become entitled to the return of the said collateral, it returned the stock to him, and caused it to be transferred on the said books into the name of the said Lloyd.

And this defendant avers that it did not, by said transaction, come under the obligation of a stockholder in the said Brunswick State bank, and this respondent denies that it was in any way bound to give the notice of the said transfer, as stated in the second paragraph of the bill, in order to prevent liability attaching to it.

4. This defendant saith that it has no knowlege whether the plaintiffs are lawful creditors of the said bank, and it doth not admit that they, or any of them, are, and it requires full proof of the said claim.

5. It has no knowledge of the alleged failure, or insolvency of the said Brunswick State bank, or of the insolvency of the said Marsh and said Lloyd, or of the death of the latter, and it makes no admission with regard to any of the averments of the third and sixth paragraphs of the bill.

6. It has not in its possession a copy of the charter of said Brunswick State bank and of the Code of Georgia, and while it believes that the extracts alleged to be taken therefrom, set forth in the fourth and fifth paragraphs of the bill, are correctly stated, nevertheless, for greater certainty, this defendant prays that reference may be had to the law of the State of Georgia, relating thereto, so far as the same may be held to be applicable.

7. It denies the conclusions of law stated in the said fourth and fifth paragraphs of the bill, and especially it is advised that the alleged and pretended claims of the plaintiffs against the defend-

ant have long since been barred by the statute of limitations and by the laches of the plaintiffs.

8. It has no knowledge in regard to the averments of the
10 seventh, eighth and ninth paragraphs of the bill; it doth not admit the same, and requires full proof thereof, and it denies the conclusions of law stated in said eighth paragraph, but it admits that each of the alleged claims of the plaintiffs were for transactions occurring entirely after the final transfer of the said stock by the defendant to said Lloyd.

9. This defendant, further answering, avers that the plaintiffs, and each of them, should be debarred from maintaining their bill, and recovering any sums of money from this defendant because of their laches in the prosecution of the same.

10. And this defendant, further answering, saith that the said claims and demands of the plaintiffs, and the causes of action and each of them, in the said bill of complaint averred and stated, accrued more than three years before the filing of the original bill in this cause, and that the plaintiffs, and each of them, are barred from the recovery of the same by the provisions of the Maryland Code of Public General Laws, article 57, section one, relating to the limitations of actions, and the defendant prays the benefit of the Code and of all statutes relating to the limitation of actions, as fully as if said defence was presented by plea or demurrer, as well as by this answer, and it pleads the said statute of limitations in bar of the alleged claims of the plaintiffs, and of each of them. And, having fully answered the bill of complaint, it prays hence to be dismissed with its costs.

THE NATIONAL BANK OF BALTIMORE,
By CHRISTIAN DEVRIES, *President.*

[Corporate Seal.]

Attest as to seal:
J. THOS. SMITH, *Cashier.*

WILLIAM A. FISHER,
JAMES L. McLANE,
ALLAN McLANE,
Solicitors for Defendant.

STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

I, Murray Hanson, a notary public of the State of Maryland, duly appointed and qualified, and resident at the city of Baltimore, do hereby certify that on this fourth day of March, A. D., 1898,
11 before me personally appeared at the city aforesaid Christian Devries, president of the National Bank of Baltimore, and made oath on the Holy Evangely of Almighty God that the matters and facts stated in the foregoing answer, so far as they are stated on

his own knowledge are true, and so far as the same are stated not upon his own knowledge, they are true to the best of his information and belief.

In witness whereof I hereunto set my hand and notarial seal, the day and year aforesaid.

MURRAY HANSON,
Notary Public.

[NOTARIAL SEAL.]

Petition of Creditors to be Made Parties Plaintiff and Order of Court Thereon Granting Same.

Filed August 5, 1901.

In the Circuit Court of the United States in and for the District of Maryland.

BRUNSWICK TERMINAL COMPANY and Others
vs.
NATIONAL BANK OF BALTIMORE.

To the honorable the judge of said court:

Your petitioners, W. E. Allison, Fred. Armstrong, Charles J. Anderson, Martin A. Anderson, Mrs. Spencer R. Atkinson, D. D. Atkinson, secretary of State Board Dental Association; American Trust & Banking Co., Victor R. Abrams, R. H. Alston, T. J. Allison, Mrs. J. R. Abrams, Bernheim Brothers, M. M. Bush, Miss M. Loula Baker, M. A. Baker, Sr., Brunswick Lumber Co., W. G. Brantley, D. L. Keller, and Chas. Hoffman, trustees of Oglethorpe Lodge, No. 24, K. of P., S. A. Brockington, secretary Pilots Association B. W. Blount, administrator J. H. Blount, deceased, E. Brobston & Co., agents Mrs. Priscilla Brobston, Stanley Brobston, I. N. Bishop, Brunswick Terminal Co., R. Borchardt, Ben. Borchardt, Mrs. A. Borchardt, F. G. Boatwright, G. W. Blaton, Brunswick Light Horse Guards, F. A. Brewster, L. J. Brown, John W. Bennett, Mrs. S. S. Collins, guardian, A. W. Corker, J. W. Collins, The Commercial Bank of St. Louis, Mo., Henry C. Cuthbert, J. L. Courson, O. W. Cole, E. F. Coney, Dodson-Hils Mnfg. Co., Miss Ruby Dart, John R. Doerflinger, Jr., D. J. Dillon, James Dent, D. H. Deveraux, C. L. Elliott, financier A. O. U. W., Albert Fendig, Mrs. J. Foley, First National
12 Bank of Macon, Ga., C. W. Floyd, Jane Farmer, Ga. Home Insurance Co., Ga. Mills and Elevator Co., P. W. Godfrey, The Gulf National Bank of Tampa, Fla., J. B. Anderson, rec.; B. F. Howard, John Hurn, A. W. Hurn, R. T. Hitch, G. W. Harper, E. Harper, E. Harper & Son, S. B. Henderson, J. W. Heidt, Miss N. Hardcastle, H. H. Harvey, Mrs. J. H. Hickman, Miss Mary Ann Irwin, W. Joerger, Carrie Johnson, A. Kaiser and Brother, A. Kaiser and Brother, A. Kaiser and Brother, M. Kaiser, treasurer; M. Kaiser, Oliver Kennedy, L. E. Lofton, James E. Lambright, Mrs. C. B. Lloyd,

L. J. Leavy, Goldsmith Lehman, B. H. Levy & Brothers & Co., Arnlers Larsens, W. Langley, Mrs. H. S. Lee, treasurer; Leo Lomm, G. Lowenstein, J. M. Lyle, J. D. Mitchell, Kennon Mott, Mayor and Council of the City of Brunswick, Mrs. M. C. Mineham, Mrs. T. J. Mineham, L. A. Miller, manager; L. A. Miller, Mrs. W. D. Miller, J. A. Montgomery, J. A. Montgomery, treasurer; H. A. Miller, Nathan Markow Itz, E. L. McGougan, treasurer; The Merchants and Traders Bank of Brunswick, Ga.; The North-Ameri an Investment Co., W. B. Newkirk, Walter Nathan, National Cash Register Co., Miss J. R. Nathans, Mystice and M. Nelson, J. Nelson Norris, T. E. Owens, treasurer Brunswick Chapter No. 66; T. E. Owens, Vincent Pinebad, Mrs. S. A. Penniman, J. T. Palmer, Sealy Palmer, Mrs. J. J. Pennick, The Phœnix Mutual Life Insurance Co., W. E. Recknagle, receiver St. Zions Lang and Improvement Co.; Wm. E. Recknagle, Mrs. Lizzie M. Russell, J. S. Raffo, Rush Lodge 1 O. O. F., Mrs. Ann Reynolds, Sharp and Perkins, Mrs. Maria L. Stacy, H. E. Schriver, administrator C. W. Schriever, deceased, Misses K. and M. Slater, A. C. Stoddard, Mrs. Mary L. Stacy, Thomas Smales, A. Schriever, Thurber, Whyland & Co., J. S. Thomas, receiver First National Bank of Brunswick; Eolia Tison, administratrix; C. M. Tilton, trustee for his wife; S. T. Thomas, secretary and treasurer; Elias Veroukis, Elias Veroukis, J. R. Weed, Mrs. V. E. Walters, J. J. Wimberly, J. B. Wright, Wright & Cowen, Wright and Cowen, John White, L. L. Wilson, W. M. Wiggins, Mrs. W. A. Way, W. O. W. Elliot, clerk, Way & Shephard, Lois Wilcox, Mrs. C. F. Way, A. & N. M. Black, County of Glynn; J. R. Mason, W. H. Berrie, Mrs. J. H. Hickman, Greer & Odun, N. C. Geer, Richard Taylor, Seaboard National Bank, Mrs. Lula Hay, Mrs. Minnie Duck, A. C. Johnson, Owens Johnson, Wyatt D. Aiken, C. Alexander, Mrs. E. W. Avery, Andrew W. Allen, Alexander Arpontuys, T. J. Allison, M. A. & A. L. Barkulow, Brunswick Terminal Co., Helen M. Beardsley, Brunswick Publishing Co., Brunswick & Western R. R. Co., William Brown, Jr., H. Burford, Lucy Barnwell, treasurer; McC. F. Brown, Brown & Owens, W. S. Branhan, agent; Brother St. Andrew, J. M. Bloodworth, Brown & Owens, W. E. Burbage, Brunswick Oyster Co., Brunswick Coal & Wood Company, Mrs. M. C. Blain, F. D. Biggs, J. N. Brown, L. Beach, S. R. Brown, Miss Annie Butzloff, Sarah Brown, W. S. Branham, G. W. Beaton, Cunningham, Bishop & Reeves, F. E. Cunningham, Mrs. T. F. Crovatt, Coney & Parker, Colat Brothers, E. F. Coney, R. T. Clark, R. V. Covington, F. E. Cunningham, treasurer; Coney & Parker, treasurer; Aaron Cahoun, C. A. Clarke, Florence M. Colesberry, Lula C. Colesberry, Teddie Calvin, Mrs. M. J. Colson, Mrs. A. W. Cornell, J. M. Clark & Co., Myer Clark & Co., Lucy Duglas, J. P. Davenport, Arthur Dexter, S. M. Drury, H. F. du Bignon, treasurer; H. T. Dunn & Co., T. W. Dexter, W. S. Devoe, Jr., F. A. Dunn, S. J. Dent, J. A. Dunwody, H. T. Dunn & Son, E. M. Dart & Co., E. F. Duke, H. W. Dexter, H. F. Dunwody, W. N. Dun-

13

ham, Lucy Douglas, treasurer; E. Fabian, Mrs. Mattie A. Fuguson, First National Bank of Marietta, Ga.; Farmers & Mechanics National Bank Westminster, Maryland; T. F. Ferguson, A. F. Franklin, E. Z. F. Golden, A. Gaskin & Co., F. Gatchell, W. B. Gunby, Mrs. S. E. Garber, D. M. Garber, Mrs. Mary E. Gardner, Roy Gale, E. D. Gregory, W. Henderson, S. P. Harris, V. G. Hiser, Jake Hopkins, secretary; —— Herzog, T. W. Hill, J. P. Harvey & Son, E. J. Harvey, trustee; Mrs. Catherine Haywood, B. F. Howard, M. Hirsch, E. J. Harvey, J. P. Harvey, R. J. Hyde, B. H. Houston, Hospital Association, Alexander Hardison, C. B. Irvine, manager, Ruth Irvine, Alfred Jordan, J. P. Jardine, Thomas Johnson, Laura Jones, Tommie Jones, Hattie A. Jacobs, Mrs. B. L. Jordan, M. Kaiser, treasurer Ocean Lodge, F. & A. M., H. M. King, C. J. Cornegay, J. M. Keene, agent, H. M. King, treasurer, D. W. Krauss, Alice M. Keen, G. R. Krauss, J. J. Lott & Co., Ludden & Bates, Mrs. C. B. Lloyd, Arthur Leavy, C. B. Lloyd, trustee, C. B. Lloyd, agent, T. W. Lamb, administrator, A. E. Laborn, H. P. Levin, G. Lehman, William Merchant, W. McCardle, Wash Middleton, Mrs. Allan McDonald, W. H. Morse, L. R. Maxwell, Theodora Cecil Mabry, Woodwofrd Mabry, R. A. Mingle, Mrs. M. Mineham P. C. Miller, W. B. Moore, manager, W. R. Malphurs, L. C. Marlin, S. M. Miller, H. S. McCrary, W. A. McDonald, George McArthur, W. C. McClure, McCrary's stable, McK. F. McCook, M. Nest, Miss Annie B. Noble, Miss J. R. Nathans National Cash Register Co., John Neal & Co., M. A.
14 Naeff, Mrs. S. B. Nathan, North Brunswick Land & Imp. Co., North American Investment Co., R. J. Odum, Oglethorpe Div. K. of P., C. J. Owens, Oyster Cultivation & Canning Co., William Opper, W. T. Owens, Edwin Brewster Phillips, W. F. Penniman, Jr., Minor Perry, John Phillips, W. A. Potter, Mrs. L. L. Palmer, G. F. Ponder, trustee, W. F. Parker, Mrs. J. P. Popwell, Ellen F. Penniman, L. E. Robarts, A. B. Rowe, dealer, W. H. Robertson, J. L. Robertson, Mrs. Ann Reynolds, Annie Range, Emma Robinson, J. D. Sparks, E. Schryver, E. Salisbury, J. C. Stiles, Stubbs-Greer Hardware Co., William Schurk, M. E. Shannon, J. J. Spears, C. Symmes, J. W. Stubbs, Shaw & Clark, Catherine M. Stiles, Oscar B. Stewart, W. P. Stewart, William S. Smith, J. C. Stiles, Frank B. Tupper, Freddie Thomas, W. M. Tupper, R. Torris, trustee, W. M. Toomer, S. J. Thomas, agent, S. J. Thomas, administrator, United States National Bank, E. Veroukis, Hortense Von Beglibeg, Sarah H. Verdery, W. H. Veale, agent Acme Brewing Co., Valentine & Brown, D. D. Verdery, Sarah C. Valentino, Annie A. Valentino, John G. Valentino, C. L. Valentino, W. W. Wilder, Eliza Whitehead, Louisa H. Wright, Ralph T. Waff, H. J. Waff, T. E. Waff, trustee, Mrs. E. D. Walter, A. M. Way, Elizabeth L. Wright, W. A. Way, Mrs. M. E. Wade, J. Warren, agent, W. F. Winekopf, C. S. Wylly, Wm. West, A. V. Wood, W. J. Way, Mrs. J. C. White, Wash Waters & Co., White & Smith, G. Williams, trustee, J. D. Wright, secretary and treasurer, J. M. Wilson, respectfully represent that they are

creditors of the Brunswick State Bank of Georgia, and as such pray that they may be made parties complainant in this suit.

And as in duty, etc.

WILLIAMS, THOMAS & WILLIAMS,
Attorneys for Petitioners.

It is ordered, by the circuit court of the United States in and for the district of Maryland, this 5th day of August, 1901, upon the foregoing petition, that the above mentioned petitioners be and they are hereby made parties complainant in the above suit.

THOS. J. MORRIS, *Judge.*

15 *Agreed Statement of Facts.*

Filed September 5, 1901.

In the Circuit Court of the United States in and for the District of Maryland.

BRUNSWICK TERMINAL COMPANY and Others
vs.
NATION- BANK OF BALTIMORE.

For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz:

That the Brunswick State bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State bank, filed their petition in the superior court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say:

	Name.	Date when created.	Amount.
	Allison, W. O.	March 30th, 1893.	$360 18
	Armstrong, Fred.	August 9th, 189[illegible]	129 34
	Anderson, Chas. J	April 20th, 1893	91 91
	Anderson, Martin A.	October 8th, 1892.	101 28
	Anderson, Martin A.	February 20th, 1893.	130 00
	Atkinson, Mrs. Spencer R	May 6th, 1893.	26 78
	Atkinson, D. D., sec'y State Board of Dental Association	March 8th, 1892.	108 15
	American Trust & Banking Co	May 1st, 1893.	423 20
16	Abrams, Victor R.	February 17th, 1893.	15 00
	Alston, H. R.	April 18th, 1893.	70 26
	Allison, T. J.	May 24th, 1893.	178 80
	Abrams, Mrs. E. J	May 4th, 1893.	240 00
	Bernheim Brothers	May 22nd, 1893.	85 60
	Bush, M. M	May 22nd, 1893	362 00
	Baker, Miss Loula M	May 19th, 1892.	476 19
	Baker, H. A., Sr.	April 12th, 1893	152 00
	Brunswick Lumber Co	May 28th, 1893.	504 48
	Brantley, W. G., Keller, D. L. and Hoffman, Charles, trustees Oglethorpe Lodge No 24 K. of P.	January 3rd, 1893.	901 21
	Brockington, S. A., sec'y Pilots Association	May 20th, 1893	433 50
	Blount, B. W., administrator J. H. Blount, deceased	May 11th, 1893.	160 00
	Brobston & Co., E. agts.	May 20th, 1893.	262 00
	Brobston, [illegible]. Priscilla	May 20th, 1893.	80 00
	Brobston, S[illegible]nley	August 29th, 1892.	32 01
	Bishop, I. N	May 22nd, 1893.	252 00
	Brunswick Terminal Co.	May 16th, 1893.	6,155 07
	Borchardt, R	April 30th, 1892	229 01
	Borchardt, Mrs. A	January 20th, 1892.	281 59
	Borchardt, Benj	August 2nd, 1892.	149 35
	Boatwright, F. G	April 28th, 1893.	40 00
	Blaton, G. W	May 23rd, 1893.	100 00
	Brunswick Light-House Guards	March 9th, 1893.	211 93
	Brewster, S. A.	January 23rd, 1892.	42 05
	Brown, L. J.	March 21st, 1893.	45 72
	Bennett, John W.	May 2nd, 1892	12 60
	Collins, S. S., guardian	October 24th, 1892.	947 77
	Corker, W. A	April 24, 1893.	40 00
	Collins, W. J	May 15th, 1893.	147 40
	Commercial Bank of St. Louis, Mo.	May 24th, 1893	816 96
	Cuthberth, Henry C	April 25th, 1893	56 00
	Courson, L. J.	May 17th, 1893.	276 23
	Cole, O W.	April 20th, 1893.	20 00
	Coney, E. F	March 4th, 1893.	159 12
	Dodson-Hils Mnfg. Co.	May 18th, 1893	17 79
	Dart, Miss Ruby	October 14th, 1892.	25 31
	Doerflinger, John R., Jr	March 17th, 1892.	57 13
	Dillon, D. J.	May 11th, 1893	511 92
	Dent, James	December 25th, 1891.	86 47
	Deveraux, D. H.	May 26th, 1893.	432 89
	Elliott, C. L., financier	May 22nd, 1893.	26 50
	Fendig, Albert	April 13th, 1893.	44 73
	Foley, Mrs. J	May 23rd, 1893.	200 00
	First National Bank of Macon, Georgia	May 23rd, 1893.	188 65
	Floyd, C. W.	May 2nd, 1893	121 03
	Farmer, Jane.	January 6th, 1893.	75 00
	Ga. Home Insurance Co.	May 23rd, 1893.	120 92
	Ga. Mills & Elevator Co.	May 25th, 1893.	376 50
	Godfrey, P. W.	January 30th, 1893.	52 82

Name.	Date when created.	Amount.
Gulf National Bank of Tampa, Fla., J. B. Anderson, rec	May 1st, 1893	1,065 97
Howard, B. F.	April 17th, 1893	44 00
Hurn, John	May 24th, 1893	293 25
Hurn, A. W.	May 24th, 1893	376 75
Hitch, R. T.	May 19th, 1893	51 90
Harper, G. W.	May 15th, 1893	500 00
Harper, E.	May 15th, 1893	1,500 00
Henderson, S. R.	August 25th, 1892	13 70
17 Heidt, J. W.	January 21st, 1892	106 10
Hardcastle, Miss N.	May 17th, 1893	10 00
Harvey, H. H.	May 11th, 1893	16 00
Hickman, Mrs. J. H.	April 24th, 1893	455 05
Irwin, Miss Mary Ann	April 10th, 1893	44 00
Joerger, W.	May 22nd, 1893	100 00
Johnson, Carrie	December 15th, 1892	121 62
Kaiser, A. & Brother	May 17th, 1893	220 00
Kaiser, A. & Brother	May 23rd, 1893	200 00
Kaiser, A. & Brother	April 28th, 1893	1,147 08
Kaiser, M., treasurer	February 1st, 1893	240 18
Kaiser, M.	September 29th, 1892	500 00
Kennedy, Oliver	March 12th, 1892	1,163 87
Loftin, L. E.	February 6th, 1893	100 52
Lambright, James E.	October 6th, 1892	131 50
Lloyd, Mrs. C. B.	January 28th, 1893	1,000 00
Leavy, L. J.	April 5th, 1893	135 57
Lehman, Goldsmith.	January 12th, 1892	82 22
Levy, B. H. & Bros. & Co.	May 25th, 1893	153 26
Larsen, Arnlers	May 10th, 1893	376 02
Langley, W.	April 6th, 1893.	35 89
Lee, Mrs. H. S. treasurer	February 23rd, 1893	25 00
Lomm, Leo	February 10th, 1892	50 37
Lowenstein, G.	May 19th, 1893	352 18
Lyle, J. M.	April 10th, 1893	35 33
Mitchell, J. D.	December 8th, 1892	700 00
Mott, Kennon	May 19th, 1893	132 99
Mayor & council city of Brunswick	March 18th, 1892	1,652 00
Mineham, Mrs. M. C.	January 28th, 1893	1,500 00
Mineham, Mrs. P. J.	March 28th, 1893	244 80
Miller, L. A., manager	January 9th, 1893	273 94
Miller, L. A.	April 3rd, 1893	124 78
Miller, Mrs. W. D.	May 5th, 1893	61 00
Montgomery, J. A.	May 4th, 1893	36 72
Montgomery, J. A., treasurer	September 19th, 1892	127 61
Miller, H. A.	March 17th, 1893	34 92
Markowitz, Nathan	May 20th, 1893	38 50
McGougan, E. L., treasurer	February 24th, 1892	17 40
Merchants & Traders Bank of Brunswick, Ga.	May 23rd, 1893	1,587 70
North American Investment Co.	April 11th, 1893	50 00
Newkirk, W H.	January 11th, 1892	376 81
Nathan, Walter	February 24th, 1893	25 01
National Cash Register Co.	May 24th, 1893.	9 90
Nathan, Miss J. R.	March 20th, 1893	300 00
Nelson, Mystice and M.	February 2nd, 1892	153 99
Norris, Nelson J.	June 16th, 1892	10 25
Owens, T. E., treasurer Brunswick Chapter No. 66	March 4th, 1893	64 49
Owens, T. E.	May 9th, 1893	9 11
Pinebad, Vincent	October 15th, 1892	615 00
Penniman, Mrs. S. A.	May 13th, 1893	540 00
Palmer, J. T.	April 21st, 1893	253 49

	Name.	Date when created.	Amount.
	Palmer, Sealy	February 8th, 1892	14 63
	Pennick, J. J. Mrs.	March 10th, 1892	319 58
	Phœnix Mutual Life Ins. Co.	April 21st, 1893	127 72
	Recknagel, W. E., rec. St. Sions Land & Imp. Co.	September 10th, 1893	238 62
	William E. Recknagel	January 12th, 1893	722 31
	Mrs. Lizzie M. Russell	April 21st, 1893	660 00
	Raffo, J. S.	May 6th, 1893	99 50
18	Rush Lodge I. O. O. F.	April 28th, 1893	83 91
	Reynolds, Mrs. Ann	October 7th, 1891	200 00
	Sharp & Perkins	May 25th, 1893	85 23
	Stacy, Mrs. Maria L.	March 2nd, 1893	4,047 27
	H. E. Schriever, adm'r C. W. Schriever, deceased	May 9th, 1893	2-5 10
	Slater, Misses K. and M.	May 3rd, 1893	105 93
	Stoddard, A. C.	July 1st, 1892	144 17
	Stacy, Mrs. Mary L.	February 10th, 1893	250 00
	Smales, Thomas	May 1st, 1893	30 00
	Schriever, A.	May 15th, 1893	86 40
	Thurber, Whyland & Company	May 24th, 1893	35 22
	Thomas, J. S., rec. of the First Nat. Bank of Brunswick	May 15th, 1893	2,111 59
	Tisch, Eolia, adm'x	April 22nd. 1893	35 00
	Tilton, C. M., trustee for his wife	January 12th, 1892	148 64
	Thomas, S. J., sec. & treas.	May 2nd, 1893	211 97
	Veroukis, Elias	May 2nd, 1893	663 40
	Veroukis, Elias	February 2nd, 1893	500 00
	Weed, J. R.	February 10th, 1893	199 60
	Walters, Mrs. V. E.	February 24th, 1891	150 58
	Wimberly, J. J.	January 20th, 1893	3,322 80
	Wright, J. B.	May 23rd, 1893	310 00
	Wright & Cowen	June 29th, 1892	1,000 00
	Wright & Cowen	August 12th, 1892	1,000 00
	White, John	March 15th, 1892	335 20
	Wilson, L. L.	February 9th, 1893	80 00
	Wiggins, W. M.	May 8th, 1893	307 72
	Way, Mrs. W. A.	May 13th, 1893	65 00
	W. O. W. (Elliott Clerk)	May 22nd, 1893	28 05
	Way & Shephard	May 19th, 1893	61 29
	Wilcos, Lois	May 6th, 1893	42 30
	Way, Mrs. C. F.	April 1st, 1892	23 43
	Black, A. & N. M.		251 09
	County of Glynn	April 2nd, 1893	2,758 20
	Mason, J. R.	February 1st, 1892	432 27
	Berrie, W. H.	February 12th, 1892	2,494 59
	Hickman, Mrs. J. H.	April 24th, 1893	455 05
	Greer & Odum	February 10th, 1893	89 52
	Greer, N. C.	February 9th, 1893	170 17
	Taylor, Richard	March 28th, 1893	520 00
	Seaboard national bank	April 8th, 1892	2,750 00
	Hay, Mrs. Lula	January 5th, 1892	52 77
	Duck, Mrs. Minnie	January 8th, 1893	804 50
	Johnson, A. C.	May 10th, 1893	62 63
	Johnson, Owen	November 3rd, 1892	29 92

That the following persons are creditors of the Brunswick State bank in the amounts stated in connection with their names although their claims were never proved in the said case, that is to say:

Aiken, Wyatt D	May 25th, 1893			$ 74
Alexander, C	"	"		6 50
Avery, Mrs. E. W	"	"		76 31
Allen, Andrew W	"	"		2 00
Arpontuys, Alexander	"	"		68 00
19 Allison, T. J	May 25th, 1893			3 00
Barkulow, M. A. & A. L	"	"		8 27
Brunswick Terminal Co	"	"		3,464 01
Beardsley, Helen M	"	"		5 00
Brunswick Publishing Co	"	"		211 09
Brunswick & Western R. R. Co	"	"		65 86
Brown, William, Jr	"	"		26 36
Burford, H	"	"		448 13
Barnwell, Lucy, treasurer	"	"		145 54
Brown, F. McC	"	"		74 44
Brown & Owens	"	"		69 35
Branham, W. S., agent	"	"		100 00
Brother St. Andrew	"	"		6 05
Bloodworth, J. M	"	"		43 79
Brown & Owens	"	"		114 51
Burbage, W. W	"	"		13 31
Brunswick Oyster Company	"	"		27 18
Brunswick Coal & Wood Co	"	"		55 05
Blain, Mrs. M. C	"	"		8 85
Biggs, F. D	"	"		71 20
Brown, J. N	"	"		35 25
Beach, L	"	"		54 30
Brown, R. S	"	"		11 50
Butzloff, Miss Annie	"	"		144 19
Brown, Sarah	"	"		4 00
Branham, W. S	"	"		28 45
Beaton, G. W	"	"		100 00
Cunningham, Bishop & Reaves	"	"		12 51
Cunningham, F. E	"	"		325 15
Calvin, Teddy	"	"		29 71
Crovatt, Mrs. T. F	"	"		2 00
Coney & Parker	"	"		554 55
Collat Bros	"	"		153 74
Coney, E. F	"	"		59 12
Clark, R. T	"	"		52 66
Covington, R. V	"	"		37 26
Cunningham, F. E., treasurer	"	"		23 28
Coney & Parker, treasurer	"	"		31 55
Cahoun, Aaron	"	"		2 75
Clarke, S. A	"	"		10 00

Colesberry, Florence M.	May 25th, 1893			$1 00
Colesberry, Lula C.	"	"	.....	20 43
Colson, Mrs. M. J.	"	"	.....	24 00
Cornell, Mrs. A. W.	"	"	.....	10 00
Clarke, J. M. & Co.	"	"	.....	54 35
Clarke, Myer & Co.	"	"	.....	12 10
20 Douglas, Lucy	May 25th, 1893		.....	5 22
Davenport, J. T.	"	"	.....	1 00
Dexter, Arthur	"	"	.....	12 41
Drury, S. M.	"	"	.....	2 46
Dubignon, H. F., treasurer	"	"	.....	15
Dunn, H. T. & Co	"	"	.....	80
Dexter, T. W.	"	"	.....	466 28
Devoe, W. H., Jr.	"	"	.....	23 93
Dunn, F. A.	"	"	.....	3 75
Dent, S. J.	"	"	.....	71
Dunwody, J. A.	"	"	.....	89 00
Dunn, H. T. & Son	"	"	.....	31 10
Dart, E. M. & Co.	"	"	.....	50
Duke, E. F.	"	"	.....	43 18
Dexter, H. W.	"	"	.....	3 50
Dunwody, H. F.	"	"	.....	2 09
Dunham, W. N.	"	"	.....	38 34
Douglas, Lucy, treasurer	"	"	.....	43 52
Fabian, E.	"	"	.....	27
Ferguson, Mrs. Mattie A.	"	"	.....	19 52
First National Bank of Marietta, Ga.	"	"	.....	170 69
Farmers & Mechanics Nat. Bank of Westminster, Md	"	"	.....	623 34
First National Bank of Brunswick	"	"	.....	16 80
Ferguson, T. B.	"	"	.....	49 17
Franklin, A. F.	"	"	.....	46 48
Golden, E. Z. F.	"	"	.....	25 00
Gaskin & Co., A.	"	"	.....	20 00
Gatchell, F.	"	"	.....	50 57
Gunby, W. B.	"	"	.....	40 68
Garber, Mrs. S. E.	"	"	.....	58 26
Garber, D. M.	"	"	.....	13 36
Gardiner, Mrs. Mary E.	"	"	.....	79 07
Gale, Roy	"	"	.....	5 00
Gregory, E. D.	"	"	.....	25 00
Henderson, W.	"	"	.....	8 00
Harris, S. P.	"	"	.....	8 00
Heiser, V. G.	"	"	.....	167 36
Hopkins, Jake, sec'y	"	"	.....	38 48
Herzog	"	"	.....	41 94
Hill, T. W.	"	"	.....	2 28
Harvey, J. P. & Sons	"	"	.....	49
Harvey, E. J., trustee	"	"	.....	27 50

Haywood, Mrs. Katherine	May 25th, 1893			$2 38
Howard, B. F.	"	"		44 00
21 Hirsch, M.	May 25th, 1893			05
Harvey, E. J.	"	"		28 78
Harvey, J. P.	"	"		104 84
Hyde, R. J.	"	"		259 08
Houston, B. H.	"	"		12
Hospital Association	"	"		21 07
Hardison, Alex	"	"		3 00
Irvine, C. B. manager	"	"		6 25
Irvine, Ruth	"	"		2 45
Jordan, Alfred	"	"		5 47
Jardine, J. P	"	"		6 41
Johnson, Thomas	"	"		4 15
Jones, Laura	"	"		3 18
Jones, Tommie	"	"		2 00
Jacobs, Hattie A	"	"		3 00
Jordon, Mrs. B. L.	"	"		9 00
Kaiser, M., treasurer Ocean Lodge F. & A. M.	"	"		452 76
King, H. M.	"	"		2 85
Cornegay, C. J.	"	"		100 00
Keen, J. M., agent	"	"		6 59
King, H. M., treasurer	"	"		17 50
Krauss, D. W.	"	"		7 50
Keen, Alice M.	"	"		3 61
Krauss, G. R.	"	"		05
Lott, J. J. & Co.	"	"		278 33
Luddin & Bates	"	"		50
Lloyd, Mrs. C. B.	"	"		70 00
Leavy, Arthur, trustee	"	"		15 73
Lloyd, C. B.	"	"		40 59
Lloyd, C. B., agent	"	"		526 30
Lamb, T. W., adm'r	"	"		1 90
Laborn, A. E.	"	"		65
Levin, H. P.	"	"		6 75
Lehman, G.	"	"		1 00
Merchant, William	"	"		10 00
McCardle, W	"	"		8 00
Middleton, Wash.	"	"		9 00
McDonald, Mrs. Allen	"	"		3 60
Morse, W. H.	"	"		24
Maxwell, L. R.	"	"		21 11
Mabry, Theodora, Cecil	"	"		1 88
Mabry, Woodford	"	"		1 10
Mingle, R. A.	"	"		2 12
Mineham, Mrs. M.	"	"		1 92
Miller, P. C.	"	"		2 84

22	Moore, W. B., manager.....	May 25th, 1893.....		$1	00
	Malphrus, W. R.....	"	"	15	37
	Marlin, L. C.....	"	"	23	80
	Miller, S. M.....	"	"	54	13
	McCreary, H. S.....	"	"	41	14
	McConald, W. A.....	"	"	117	14
	McArthur, George.....	"	"	175	90
	McClure, W. C.....	"	"	62	18
	McCreary's stable.	"	"	3	01
	McCook, McK. F.....	"	"	1	24
	Neat, M.....	"	"	4	45
	Noble, Miss Annie B.....	"	"	16	00
	Nathans, Miss J. R.....	"	"	80	00
	National Cash Register Co.....	"	"	1	31
	Neal & Co., John.....	"	"	17	80
	Naeff, M. A.....	"	"	272	85
	Nathans, Mrs. S. B..	"	"		19
	North Brunswick Land & Imp. Company.....	"	"	2	73
	North American Investment Co.....	"	"	50	00
	Odum, R. J.....	"	"	10	00
	Oglethorpe Div. K. of P.....	"	"		36
	Owens, C. J.....	"	"		65
	Oyster Cultivation and Canning Company.....	"	"	1	96
	Opper, William.....	"	"	5	33
	Owens, W. T.....	"	"	1	60
	Phillips, Edwin Brewster.....	"	"	25	30
	Penniman, W. F., Jr.	"	"	8	72
	Perry, Minor.....	"	"	33	51
	Phillips, John.....	"	"	23	15
	Potter, W. A.....	"	"	25	34
	Palmer, Mrs. L. L., treas.....	"	"	1	10
	Ponder, G. F., trustee.....	"	"	10	62
	Parker, W. F.....	"	"	3	61
	Powell, Mrs. J. B.....	"	"	17	90
	Penniman, Ellen F.....	"	"	5	50
	Robarts, L. E.....	"	"	26	22
	Rowe, A. B., dealer.....	"	"		49
	Robertson, W. H.....	"	"	6	00
	Robertson, J. L.....	"	"	6	00
	Reynolds, Mrs. Anne.....	"	"	7	00
	Range, Annie.....	"	"	5	00
	Robinson, Emma...	"	"	10	13
	Sparks, J. D.....	"	"	15	00
	Shryver, E.....	"	"	69	55
23	Salisbury, E...	May 25th, 1893.....		10	00
	Stiles, J. C.....	"	"	4	84
	Stubbs-Greer Hardware Co.....	"	"	152	00

Shurk, William	May 25th, 1893			$30 00
Shannon, M. E	"	"		3 82
Spears, J. J	"	"		45 45
Symmes, C	"	"		60 00
Stubbs, J. W	"	"		100 00
Shaw & Clarke	"	"		11 00
Stiles, Katherine M	"	"		1 25
Stewart, Oscar B	"	"		4 00
Stewart, W. T	"	"		3 00
Smith, William S	"	"		5 12
Stiles, J. C	"	"		4 52
Tupper, Frank B	"	"		150 00
Thomas, Freddie	"	"		13 57
Tupper, W. M	"	"		293 58
Torras, R., trustee	"	"		60
Toomer, W. M	"	"		9 83
Thomas, S. J., agent	"	"		49 32
Thomas, S. J., adm'r	"	"		9 91
U. S. national bank	"	"		6,500 00
Veroukis, E	"	"		128 06
Von Beglibeg, Hortense	"	"		9 00
Verdery, Sarah H	"	"		20 95
Veale, W. H., agent Acme Brewing Co	"	"		18
Valentino & Brown	"	"		74 55
Verdery, D. D	"	"		11 81
Valentino, Sarah C	"	"		5 20
Valentino, Annie A	"	"		5 20
Valentino, John G	"	"		5 20
Valentino, C. L	"	"		5 20
Wilder, W. W	"	"		1 00
Whitehead, Eliza	"	"		11 00
Wright, Louisa H	"	"		15 00
Waff, Ralph T	"	"		14 75
Waff, H. J	"	"		23 25
Waff, T. E., trustee	"	"		40 00
Walter, Mrs. E. D	"	"		8 00
Way, A. M	"	"		2 75
Wright, Elizabeth L	"	"		309 82
Way, W. A	"	"		3 50
Wade, Mrs. M. E	"	"		6 19
Wood, A. V	"	"		11 17
Way, W. J	"	"		8 32
Warren, J., agent	"	"		101 98
24 Weinkopf, W. F	May 25th, 1893			39 57
Wiley, C. S	"	"		40 00
White, Mrs. J. C	"	"		13 16
West, William	"	"		5 00
White & Smith	"	"		3 40

Williams, G., trustee	May 25th, 1893	$ 05
Wright, J. B., sec'y & treas	May 25th, 1893	160 25
Wilson, J. M	" "	1 72

That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the co-partnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said Brunswick State bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said retransfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

That the indebtedness of said Brunswick State bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder.

25 It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses.

WILLIAMS, THOMAS & WILLIAMS,
Attorneys for Plaintiffs.
WILLIAM A. FISHER,
ALLAN McLANE,
Solicitors for Defendant.

Opinion.

Filed December 18, 1901.

In the Circuit Court of the United States for the District of Maryland.

THE BRUNSWICK TERMINAL COMPANY and Others
vs.
THE NATIONAL BANK OF BALTIMORE. } In Equity.

MORRIS, *District Judge:*

This is a bill filed January 14, 1898, by the Brunswick Terminal Company and others, creditors of the Brunswick State bank, a corporation chartered by the State of Georgia, which failed and was declared insolvent in May, 1893.

The object of the bill is to enforce in behalf of the creditors of said Brunswick State bank against the National Bank of Baltimore, an alleged stockholder, a statutory liability equal to the par value of the stock in the Brunswick State bank at one time standing in the name of said National Bank of Baltimore.

This case was heard before on a demurrer to the defendant's answer setting up the plea of limitations under the Maryland statute. This court overruled the demurrer and on the plaintiff's appeal to the circuit court of appeals for the fourth circuit that decision was reversed and it was held that the Georgia statute, by which suits to enforce rights accruing under acts of incorporation may be brought within twenty years, was applicable, and that the Maryland statute was not to be applied. Brunswick Terminal Co., *v.* Nat. Bank of Balt., 99 Fed. Rep., 635. The case now comes on to be heard upon the merits.

The agreed statement of facts contains the following:

"That in the month of August, 1890, the defendant dis-
26 counted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of $10,000, endorsed by the co-partnership firm of Lloyd & Adams, and received, together with the note, as the collateral security for its payment, 110 shares of the capital stock of said Brunswick State bank of the par value of $100 per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity and the defendant, being under obligation to return the stock, the pledge being at end and the pledgor entitled to its return, retransferred the stock on the books of said Brunswick State bank by direction of the pledgor and said transfer was fully completed on

the books of the said bank on or before the *20th day of October, 1890*, but no notice by publication of the fact of said retransfer was given by the defendant; that the defendant never had or claimed any interest in said stock save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof. That the indebtedness of said Brunswick bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder."

The liability of stockholders of the Brunswick State bank to the creditors thereof is created by section 9 of its charter found in the Laws of Georgia of 1889, page 522, which is as follows:

"SECTION 9. Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets; and the stockholders in addition thereto, shall be individually liable, equally and ratably, and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation, *to the extent of the amount of their stock therein*, at the par value thereof, respectively, *at the time the debt was created*, in addition to the amount invested in such shares."

By this provision the stockholder is made liable only to the extent of his stock at the time the debt was created.

It is admitted that the defendant acquired the stock as pledgee on August 25, 1890, and retransferred it on October 20, 1890,
27 and it is admitted that all the transactions with the Brunswick State bank from which the debts of the plaintiffs arose commenced after the date when the defendant had retransferred the stock on the books of the bank. If we look solely to the wording of section 9, it would seem plain, and not to be disputed, that at the time the debts were created the defendant had no stock in the Brunswick State bank, and it was under no liability whatever.

But the plaintiffs invoke section 1496 of the Georgia Code of 1882, which is as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter and shall transfer his stock he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer of his intention to hold him liable, provided he shall give notice once a month, for six months, of such transfer immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office." As by the charter of the Brunswick State bank a stockholder was only liable as surety to creditors to the extent of his stock in the bank at the time the debt was created, and as the defendant at the time the debts of the plaintiffs were created had no stock in the bank, and was, therefore, under no liability, it does not appear that section 1496 of the Georgia Code could have

any application to this defendant. This section is applicable to a stockholder who being individually liable to a creditor or creditors shall then transfer his stock. The stockholders in the Brunswick State bank were only liable for debts created while they held their stock, and, as applied to them, this section means that a stockholder who has become individually liable to a creditor by holding stock at the time the creditor's debts were created shall be exempt from such liability, provided he publishes a notice that he has transferred his stock, unless within six months after the transfer the creditor gives him notice that he intends to hold him liable. This would seem to be the plain meaning and intention of the statute.

As section 1496 enables a stockholder, who by the charter is already under liability to a creditor, to escape that liability by transferring his stock, unless the creditor gives him notice within six months after the transfer, it is sensible and understandable why notice of the transfer should be given, but as to persons who as yet had no dealing with the bank out of which debts could be *be* created,

to require notice to them would not be sensible, and would
28 be a mere arbitrary penalty without reason, a thing which is

not to be imputed to the legislature, if the section is capable of a more reasonable interpretation. If no notice of transfer by advertisement is given by the stockholder, then no notice within six months need be given by the creditor, and both stand upon the rights given by the charter, unaffected by section 1496 of the code.

Against this construction the complainants urge a ruling by the supreme court of Georgia in the case of Robertson *vs.* Downing, 95 Ga., 505 (1894). This was a proceeding similar to the present one to hold stockholders of the insolvent Brunswick State bank, resident in Georgia, liable to creditors.

The supreme court of Georgia filed no opinion, but by a head note memorandum ruled (one of the three judges doubting) that the liability of a stockholder continued for any debt contracted by the corporation at any time, both before as well as after he had transferred his stock, unless he had given notice of the transfer conformably to section 1496 of the code.

This ruling was made four years after the defendant in this case had re-transferred the stock held by it in pledge, from August 25th to October 20th, 1890. The same questions growing out of the liability of the stockholders of the Brunswick State bank came before the supreme court of Georgia, again in Chatam Bank *vs.* Brobston, 99 Ga., 801 (1895). In that case two of the judges considered themselves bound by the previous ruling in 95 Georgia, and the third judge recorded his dissent. The court recites that section 1896 of the code had been repealed, and that the legislature had in 1894, substituted a provision that the individual liability of a stockholder should cease upon transfer of his stock, unless the corporation should fail within six months after the transfer; and that in view of this

change in the law differences of opinion between the judges were not important, except as affecting the particular litigation before it. The court says (page 804): "If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the head notes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration.

The present defendant was not a party to either of the above-mentioned cases, never was within the jurisdiction of the
29 courts of Georgia, never was a real, but only a nominal shareholder for three months in 1890, and in view of this explanation by the supreme court of Georgia it would seem that the question of the liability of the defendant in the case now being considered may be fairly treated as still open for independent consideration and examination.—

Central R. R. *vs.* Wright, 164 U. S., 327–332.

Section 9 of the charter of the Brunswick State bank, creating the individual liability of stockholders, is in substantially the same words as are used in many statutes in many different States, and its meaning may be said to be fixed by common consensus; and, although the highest court of the State may give it a different and peculiar construction will be binding upon those whose liability is afterwards incurred, it would seem but just as to those who have made a *bona fide* transfer of their stock before a different interpretation was announced that their liability should be governed by the general- accepted *by* meaning.

Carroll County *vs.* Smith, 111 U. S., 556, was a case with regard to the validity of certain county bonds which the constitution and laws of Mississippi provided should not be valid, unless two-thirds of the qualified voters of the county at an election should assent thereto. The supreme court of Mississippi construed the words of the constitution and the laws requiring the assent of two-thirds of the qualified voters to mean two-thirds of the whole number qualified to vote and not merely two-thirds of such number as should actually vote at the election, and the supreme court of Mississippi for that reason declared the bonds invalid. The Supreme Court of the United States, finding that the *bona fide* holder of the same issue of bonds in the case brought before it was not a party to the case in the State court, and that the rule of construction announced in that case had not been previously established so as to have become recognized as the settled law of the State, did not feel constrained to accept the conclusions of the supreme court of Mississippi, for the reason that the generally accepted meaning of similarly worded

provisions had been that what was meant was two-thirds of the persons who actually cast their votes.

Tolson *vs.* Ninety-six, 159 U. S., 625, 626, 627.
Pine Grove *vs.* Talcott, 19 Wal., 666.
Burgess *vs.* Tilghman, 107 U. S., 20–33.
Pana *vs.* Bowler, 107 U. S., 529–540.
Thompson *vs.* Perrine, 103 U. S., 817.
Butz *vs.* Muscatine, 8 Wal., 583.
Pease *vs.* Peck, 18 Howard, 598.

30 The case now in hand I take to be one in which, for similar reasons, I am not bound to follow the Georgia decision. It surely was not to be supposed by any one who examined the charter of the Brunswick State bank and section 1496 of the Code of Georgia that it was intended to inflict a mere penalty upon those who might from time to time hold its stock by arbitrarily making them liable for all transactions during twenty years after they had ceased to be stockholders.

As is said in Williams *vs.* Hanna, 40 Indiana, 544, quoted in Thompson's Liability of Stockholders, section 95, "The creditor, if he looks to the individual liability of stockholders at all, looks to those who are stockholders at the time he lends his credit and to those he should be content to look for the collection of his debt."

See also 1 Cook on Stockholders, section 259.
Matthews *vs.* Albert, 24 Md., 527–539.

As the defendant did not appear on the stock registry as one of the stockholders of the Brunswick State bank at the time the complainants gave it credit, no credit could have been given on account of any suppose- liability of the defendant as a stockholder.

The unexpected interpretation of the Georgia statute made in 1894 imposing a liability on the defendant growing out of a transfer of stock closed in 1890, in favor of creditors whose debts accrued, as stated in the bill of complaint, during the years 1892 and 1893 has all the elements of injustice which attach to *ex post facto* and retroactive laws.

I hold that the defendant is not liable for the reason that the defendant had no stock at the time when the debts of the complainants were created.

It is also urged that, as the defendant is a national bank, it had no power under its charter to invest its money in the shares of a corporation.

California Bank — Kennedy, 167 U. S., 362.
Concord Nat'l Bank *vs.* Hawkins, 174 U. S., 362.

And that the creditors of the Brunswick State bank, from the fact of this want of corporate power, were affected with notice that the shares standing in the name of the National Bank of Baltimore were not its absolute property, but held as a collateral security,

the pledgor being the real owner, and that, therefore, the defendant is not estopped from showing the facts which would have been discovered if enquiry had been made.

Robinson *vs.* Southern National Bank, 180 U. S., 295–309.
Baker *vs.* Old National Bank, 86 Fed. Rep., 1006.

31 I am, however, so well satisfied upon the ground already stated that the defendant is not liable that I do not consider this other ground of defense urged by the defendant.

I will sign the decree dismissing the bill of complaint.

Final Decree.

Filed December 20th, 1901.

In the Circuit Court of the United States for the District of Maryland. In Equity.

THE BRUNSWICK TERMINAL COMPANY and Others
vs.
THE NATIONAL BANK OF BALTIMORE.

This cause standing ready for hearing and being submitted, the counsel for the parties were heard, and the proceedings read and considered.

It is thereupon this twentieth day of December, in the year nineteen hundred and one, by the circuit court of the United States for the district of Maryland adjudged, ordered and decreed that the bill of complaint be and the same is hereby dismissed with costs.

THOS. J. MORRIS, *Judge.*

Petition of Complainants for an Appeal and Order Allowing Same.

Filed December 30, 1901.

In the Circuit Court of the United States for District of Maryland.

BRUNSWICK TERMINAL COMPANY ET AL.
vs.
NATIONAL BANK OF BALTIMORE.

To the honorable the judge of said court:

The complainants herein, being aggrieved by the decree of the circuit court of the United States for the district of Maryland in this cause, by *its* petition pray that they may be allowed to appeal to the United States circuit court of appeals for the fourth circuit from the decree which was passed herein on the 20th day of December,

1901; and that a proper citation may be issued and served
32 upon the defendant; that a record of the proceedings in this cause may be transmitted to the said circuit court of appeals, that the said decree may be reversed and that a decree may be directed to be passed in favor of these complainants, and your petitioners further pray that your honorable court will prescribe the amount of appeal bond to be given.

And, as in duty, &c.

WILLIAMS, THOMAS & WILLIAMS,
GOODYEAR & KAY,
Sols. for Plaintiffs.

Appeal allowed as prayed & appeal bond for costs fixed at one hundred dollars.

THOS. J. MORRIS, *Judge.*

Assignment of Errors.

Filed December 30th, 1901.

In the Circuit Court of the United States for District of Maryland.

THE BRUNSWICK TERMINAL CO. and Others, Pl't'ffs,
vs.
NATIONAL BANK OF BALTIMORE, Def't.

Assignment of errors.

Come now the plaintiffs, and file the following assignment of error- upon which they and each of them will rely in the prosecution of the writ of error in the above entitled cause.

1. That the United States circuit court erred in dismissing the bill of complaint of the plaintiffs.

2nd. That the said court erred in rendering a decree against the plaintiffs in said cause upon the pleadings and the agreed statement of facts.

Wherefore the said plaintiffs in error pray that the judgment and decree of the said court be reversed and that judgment and decree be directed entered for plaintiffs in error.

WILLIAMS, THOMAS & WILLIAMS,
GOODYEAR & KAY,
Solicitors for Plaintiffs in Error.

33 *Appeal Bond.*

Filed 6th January, 1902.

Know all men by these presents, that we, the Fidelity and Deposit Company of Maryland as principal, is held and firmly bound unto the National Bank of Baltimore, in the full and just sum of one hundred dollars ($100.00), to be paid to the said The National Bank of Baltimore, its certain attorney, successors, or assigns; to which payment well and truly to be made, we bind ourselves, our successors or assigns, by these presents.

Sealed with our seals and dated this fourth day of January, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a sitting of the United States circuit court for the district of Maryland, in a suit depending in said court, between Brunswick Terminal Company and others, plaintiffs, and The National Bank of Baltimore, defendant, a decree was rendered against the said Brunswick Terminal Company and others, and the said Brunswick Terminal Company and others having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said The National Bank of Baltimore, citing and admonishing it to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the day in the said citation mentioned.

Now the condition of the above obligation is such, that if the said Brunswick Terminal Company and others shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
Per EDWIN WARFIELD, *President.*

Attest:

[Corporate Seal.]

THOMAS L. BERRY, *Assistant Secretary.*

Sealed and delivered in presence of—

—— ——.

Approved by—
THOS. J. MORRIS, *Judge.*

34 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the National Bank of Baltimore, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the 4th day of February next, pursuant to an appeal from a decree of the circuit court of the United States for the district of Maryland, in your favor, passed on the 20th day of December, 1901, in a cause in said court wherein The Brunswick Terminal Company and others are complainants, and you are defendant to show cause, if any there be, why the said decree rendered against the said complainants in said cause mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas J. Morris, judge of the said circuit court of the United States, this sixth day of January, in the year of our Lord one thousand nine hundred and two.

THOS. J. MORRIS, *Judge.*

Service of the within citation acknowledged this 7th day of January, 1902.

ALLAN McLANE, *Solicitor.*

Order to Transmit Record.

Thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States circuit court of appeals for the fourth circuit; and the same is transmitted accordingly.

Teste:

JAS. W. CHEW, *Clerk.*

35 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Maryland,* } *To wit:*

I, James W. Chew, clerk of the United States circuit court for the district of Maryland, do certify that the foregoing is a true transcript of the record and proceedings of the said court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, this 21st day of January, A. D. 1902.

[Seal of the Court.]

JAS. W. CHEW,
Clerk of said Circuit Court.

36 *Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit.*

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Jan. 23, 1902.—Transcript of the record is filed and the cause is docketed.

Same day.—Appearance of Williams, Thomas & Williams for appellants, order filed.

Jan. 25, 1902.—Twenty copies of the printed record *is* filed.

Jan. 29, 1903.—Appearance of Allan McLane for the appellee, order filed.

37 *Stipulation to Continue.*

Filed Feb. 4, 1902.

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY ET AL.
vs.
THE NATIONAL BANK OF BALTIMORE. } No. 439.

Henry T. Meloney, Esq., clerk, etc.:

Enter the above entitled case "continued."

WILLIAMS, THOMAS & WILLIAMS,
Solicitor for Appellant.
ALLAN McLANE, *Solicitor for Appellee.*

Feb. 4, 1902 (February term, 1902).—Cause is continued.

May 10, 1902 (May term, 1902).—The said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel.

38 And thereafter at the same term, to-wit: June 25, 1902, the court here in pursuance of the statute in such cases made and provided, certified to the Supreme Court of the United States certain questions or propositions of law, which certificate is as follows, to-wit:

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Questions Certified to the Supreme Court of the United States by the Circuit Court of Appeals for the Fourth Circuit on the Case Stated.

The cause came into this court on appeal from the circuit court of the United States for the district of Maryland.

In the court below a bill was filed against the National Bank of Maryland, a national banking association doing business in Baltimore, Maryland, by the stockholders of the Brunswick State bank, a corporation of the State of Georgia, engaged under its charter in a general banking business. The bill sought to hold the defendant liable as a stockholder in the Brunswick State bank, which had become absolutely insolvent to an amount, after exhausting its assets, greatly in excess of its capital stock. The answer denied all liability.

The action was brought under the provisions of the statute law of Georgia, to-wit: section 9 of the act incorporating the Brunswick State bank, which is as follows:

39 "Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto shall be individually liable, equally and ratably and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation to the extent of the amount of their stock therein, at the par value thereof respectively, at the time the debt was created, in addition to the amount invested in such shares."

And also section 1496 of the Code of Georgia, as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable, provided he shall give notice once a month for six months of such transfer immediately thereafter in

two newspapers in and nearest the place where such institution shall keep its principal office."

The cause was heard and determined on the statement of facts following, that is to say:

"For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz:

"That the Brunswick State bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State bank, filed their petition in the superior court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say: Here follow the names of creditors, amounts due to them and when created.

40 "That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the copartnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said

Brunswick State bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said re-transfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

"That the indebtedness of said Brunswick State bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder.

"It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses."

It further appears that in 1894, Acts of Legislature of Georgia 1894, page 76, Civil Code, sec. 1888, an act was passed by the General Assembly of that State declaring that "whenever a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability for such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer."

The court below dismissed the bill, holding that the
41 defendant was not liable to any of the complaining creditors, because it had transferred its stock on October 20, 1890, and none of their claims accrued before the year 1893. The court did not consider the other ground urged by the defendant, that being a national bank it could not become purchaser of shares in another corporation, and if it sought to do so, it could not be held liable on such stock. (Concord First Nat. Bank *vs.* Hawkins, 174 U. S., 365.)

At the hearing we were referred to decisions of the supreme court of Georgia, Lane *vs.* Morris, 8 Ga., 468; Thornton *vs.* Lane, 11 Ga., 49; Force *vs.* Dahlonega Co., 22 Ga., 86; Mason *et al. vs.* Force, 30 Ga., 99, as well as two decisions invoking construction of the charter of this bank, to wit: Brobston *vs.* Downing, 95 Ga., 505; Chatham Bank *vs.* Brobston, 99 Ga., 801. The result of these decisions is summed up in the case last quoted, as follows:

1. The decisions of this court in the cases of Brobston *vs.* Downing, and *vice versa*, 95 Ga., 505, 22 S. E., 277, and Brobston *vs.* Bank, *id.*, upon a review thereof, are affirmed.

2. Where the charter of a bank imposes on all of its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of the bank, by having the same transferred to them as collateral security for debts due by the transferrers, as to those who purchase such stock outright.

3. Under the charter of the Brunswick State bank, and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transfer, as well as for a like part of those created during his ownership of the shares.

4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer as prescribed in section 1496 of the code.

Being divided and in doubt, this court respectfully certifies these questions to the Supreme Court, and asks its construction and advice thereon:

1. Is this question of the liability of a stockholder of this bank one of general law, or must we follow without question the decisions of the supreme court of Georgia thereon?

2. When shares in another corporation are transferred into the name of a national banking association, is there a presumption, and consequent notice to the world, that such shares are held
42 by such national banking association in some other capacity and not as owner thereof?

3. If a national banking association causes shares in another corporation to be transferred into its own name, is it estopped from setting up the invalidity of such a transaction?

Witness our hands this 25th day of June, 1902.

CHARLES H. SIMONTON,
Circuit Judge.
EDMUND WADDILL, JR.,
District Judge.
WM. H. BRAWLEY,
District Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true copy of the original certificate of questions or propositions of law to the Supreme Court of the United States in the therein entitled cause filed and now remaining of record in the said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the United States circuit court of appeals for the fourth circuit, at Richmond, on this 5th day of July, A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

43 Afterwards at the same term, to-wit: July 9, 1902, a duly certified transcript of the said certificate was transmitted to the Supreme Court of the United States.

And afterwards, towit, on the 15th day of December, 1903, the said Supreme Court of the United States issued its writ of certiorari to this court commanding that the record and proceedings in said cause be sent up to that court, which said writ of certiorari is annexed hereto.

Order to Transmit.

Thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

HENRY T. MELONEY, *Clerk.*

44 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Fourth Circuit,* } ss:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals for the fourth circuit, at Richmond, this 16th day of December, A. D. 1903.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th C't.

C. M. D.

45 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Brunswick Terminal Company *et al.*, are appellants and The National Bank of Baltimore is appellee, No. 439, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Maryland, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Su-
46 preme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifteenth day of December, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

47 [Endorsed:] File No. 18,608. Supreme Court of the United States. No. 88, October term, 1903. The Brunswick Terminal Co., *et al.*, *vs.* The National Bank of Baltimore. Writ of certiorari. The execution of the within writ appears from the schedules annexed hereto. Henry T. Meloney clerk U. S. circuit court of appeals fourth circuit. Dec. 16, 1903.

48 [Endorsed:] File No. 18,608. Supreme Court U. S., October term, 1903. Term No. 88. The Brunswick Terminal Co. *et al.* *vs.* The National Bank of Baltimore. Writ of certiorari and return. Filed Dec. 18", 1903.

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 439.

THE BRUNSWICK TERMINAL COMPANY,
A CORPORATION, ET AL.,
APPELANTS,

versus

THE NATIONAL BANK OF BALTIMORE,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Questions Certified to the Supreme Court of the United States By the Circuit Court of Appeals for the Fourth Circuit on the Case Stated.

The cause came into this court on appeal from the Circuit Court of the United States for the District of Maryland.

In the court below a bill was filed against the National Bank of Maryland, a national banking association doing business in Baltimore, Maryland, by the stockholders of the Brunswick State Bank, a corporation of the State of Georgia, engaged under its charter in a general banking business. The bill sought to hold the defendant liable as a stockholder in the Brunswick State Bank, which had become absolutely insolvent to an amount, after exhausting its assets, greatly in excess of its capital stock. The answer denied all liability.

The action was brought under the provisions of the statute law of Georgia, to wit: Section 9 of the act incorporating the Brunswick State Bank, which is as follows:

"Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto shall be individually liable, equally and ratably and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation to the extent of the amount of their stock therein at the par value thereof respectively, at the time the debt was created, in addition to the amount invested in such shares."

And also Section 1496 of the Code of Georgia, as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable, provided he shall give notice once a month for six months of such transfer immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office."

The cause was heard and determined on the statement of facts following, that is to say:

"For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz.:

"That the Brunswick State Bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State Bank, filed their petition in the Superior Court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State Bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say: Here follow the names of creditors, amounts due to them and when created.

"That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the copartnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State Bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State Bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said Brunswick State Bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said re-transfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State Bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

"That the indebtedness of said Brunswick State Bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State Bank as a stockholder.

"It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses."

It further appears that in 1894, Acts of Legislature of Georgia 1894, page 76, Civil Code, Sec. 1888, an act was passed by the General Assembly of that State declaring that "whenever a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability for such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer."

The court below dismissed the bill, holding that the defend-

ant was not liable to any of the complaining creditors, because it had transferred its stock on October 20, 1890, and none of their claims accrued before the year 1893. The court did not consider the other ground urged by the defendant, that being a national bank it could not become purchaser of shares in another corporation, and if it sought to do so, it could not be held liable on such stock. (*Concord First Nat. Bank* vs. *Hawkins,* 174 U. S., 365.)

At the hearing we were referred to decisions of the Supreme Court of Georgia, *Lane* vs. *Morris,* 8 Ga., 468; *Thornton* vs. *Lane,* 11 Ga., 49; *Force* vs. *Dahlonega Co.,* 22 Ga., 86; *Mason et al.* vs. *Force,* 30 Ga., 99, as well as two decisions invoking construction of the charter of this bank, to wit: *Brobston* vs. *Downing,* 95 Ga., 505; *Chatham Bank* vs. *Brobston,* 99 Ga., 801. The result of these decisions is summed up in the case last quoted, as follows:

1. The decisions of this court in the cases of *Brobston* vs. *Downing,* and *vice versa,* 95 Ga., 505, 22 S. E., 277, and *Brobston* vs. *Bank, Id.,* upon a review thereof, are affirmed.

2. Where the charter of a bank imposes on all of its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of the bank, by having the same transferred to them as collateral security for debts due by the transferrers, as to those who purchase such stock outright.

3. Under the charter of the Brunswick State Bank, and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transer, as well as for a like part of those created during his ownership of the shares.

4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer as prescribed in section 1496 of the Code.

Being divided and in doubt, this Court respectfully certifies these questions to the Supreme Court, and asks its construction and advise thereon:

1. Is this question of the liability of a stockholder of this bank one of general law, or must we follow without question the decisions of the Supreme Court of Georgia thereon?

2. When shares in another corporation are transferred into the name of a national banking association, is there a presumption, and consequent notice to the world, that such shares are held

by such national banking association in some other capacity and not as owner thereof.

3. If a national banking association causes shares in another corporation to be transferred into its own name, is it estopped from setting up the invalidity of such a transaction?

Witness our hands this 25th day of June, 1902.

CHARLES H. SIMONTON,
Circuit Judge.
EDMUND WADDILL, JR.,
District Judge.
WM. H. BRAWLEY,
District Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true copy of the original certificate of questions or propositions of law to the Supreme Court of the United States in the therein entitled cause filed and now remaining of record in the said United States Circuit Court of Appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 5th day of July, A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th C't.